

CHAPTER 13: ENFORCEMENT

13.1 PURPOSE

The purpose of this chapter is to provide enforcement provisions and to ensure compliance with this Title.

13.2 ENFORCEMENT

The Town Manager shall be designated as the person to administer and enforce the provisions of this Title and all other land use regulations adopted by the Town of Brian Head. The Town Manager shall take legal action when deemed necessary to enforce the provisions of this Title or other land use regulations. The failure of any persons to properly interpret, apply, or enforce any provision of this Title or other Ordinance of the Town shall not operate to waive or stop the Town from enforcing compliance with the Town's Ordinances.

13.3 ATTORNEY FEES

All action necessary to enforce any provision of this Code and other applicable ordinances, including, but not limited to, the costs of commencement of legal proceedings in a court of proper jurisdiction seeking judgments for violation of such ordinances, and for all court costs and attorney fees, shall be paid by the violator.

13.4 PENALTIES

Any person, firm or corporation (as principal, agent, employee or otherwise) violating, causing or permitting violation of the provisions of this Code shall be guilty of a class C misdemeanor and may be fined up to \$1,000.00 or imprisoned for not more than ninety (90) days or both such fine and imprisonment. In addition, the Town may bring an action to enjoin the continuation of the violation or seek other equitable relief. Each day a violation continues shall be considered a separate violation and offense.

13.5 ISSUANCE OF BUILDING PERMIT AND CERTIFICATES OF OCCUPANCY

13.5.1 POLICY

In order to protect buyers of condominiums, planned unit development projects, and other property in the Town of Brian Head against purchasing property on which the on and off site improvement work

is incomplete and may not be completed, and to protect the public at large from dangerous and undesirable conditions that result from unfinished on and off site improvements such as, but not limited to, erosion, flooding, and blowing dust, it is the policy of the Town of Brian Head that no building permit may be issued on any building project within the Town limits unless and until the final plat has been recorded. Construction may not begin until the development has provided necessary access to the building lot for delivery of goods and access for laborers. No wood framing shall proceed without an all weather surface road or driveway, and working water system to serve fire hydrants and fire fighting apparatus. In no event shall a certificate of occupancy be issued on any building until all required on and off site improvements are completed sufficient for safe, orderly occupancy of the building as determined by the Town Manager or designee.

13.5.2 SITE PLAN CONFORMANCE

The Building Department prior to issuance of an Permanent Occupancy permit shall review the completed improvements to ensure compliance with the approved site plan showing the location and nature of drainage work, grade changes, retaining walls, and landscaping, together with any trails, paths, or walkways. A Temporary Occupancy Certificate may be issued with adequate bonding for incomplete work when determined by the Town Manager or designee.

13.5.3 CONSTRUCTION ACCORDING TO APPROVED PLANS

No site plan will be altered or modified without prior approval of the appropriate land use authority.

13.5.4 COMPLETION AND CLEANUP DEPOSIT

Upon issuance of a permit, the Building Inspection Department shall charge a completion and cleanup deposit as established in the Brian Head Town Consolidated Fee Schedule. Upon satisfactory completion of the building and site cleanup the deposit will be refunded to the contractor of record. In such cases where the site cleanup (including fire risk mitigation) is not corrected in a timely manner, the Town may use the deposit and hire the work to be done.

13.6 COMPLIANCE WITH SUBDIVISION AND OTHER PERMIT APPROVAL

13.6.1 POLICY

In order to ensure compliance with certain provisions of this Title for subdivisions the Town Manager or designee is authorized to ensure compliance with the provisions and requirements of previously authorized permits or subdivision approval.

13.6.2 AS-BUILT DRAWINGS FOR SUBDIVISIONS

A detailed as-built site plan showing the location of public utilities, nature of drainage work, grade changes, retaining walls, and landscaping, together with any trails, paths, or walkways, shall be submitted to the Town prior to acceptance of improvements and releasing of financial security. Site improvements shall be completed pursuant to this Title and as shown in the detailed site plans in both a paper and approved electronic format.

13.6.3 CONSTRUCTION ACCORDING TO APPROVED PLANS

No subdivision improvements may be modified from the approved plat and construction drawings without prior approval of the appropriate Land Use Authority.

13.7 SECURITY FOR COMPLETION

13.7.1 POLICY

In order to ensure compliance with certain provisions of this Title for subdivisions, building projects, and other permits, the Town Manager or designee shall be hereby authorized to ensure completion of the approved design through a form of security as deemed necessary by this section or as determined by the provisions of the required permit.

13.7.2 SUBDIVISIONS

In the event that approval is sought for the completion of a subdivision, the Town shall ensure that all of the following conditions are met:

- a. The subdivider shall submit to and obtain approval from the appropriate Town official for all final construction plans, improvements and development agreements. The subdivider shall guarantee the installation and construction of the required improvements free from defects in material or workmanship and in compliance with Town standards.
- b. The guarantee shall be in the form of a corporate surety bond, escrow agreement, cashier's check or money market certificate made payable only to the Town, or irrevocable letter of credit in forms acceptable to the Town and for an amount equal to one hundred twenty-five percent (125%) of the estimated cost of the improvements. The form of any guarantee of improvements shall be reviewed and approved by the Town Attorney before acceptance of the guarantee or security by the Town. The cost estimates shall be reviewed by the Town Engineer to ensure completion of all public improvements as shown on the approved plans. In the event that the Town Engineer disputes the amounts stated in the bid bond, the subdivider shall provide contracts supported by a full performance and payment bond by the contractor, or the Town Engineer's price shall be used. All improvements must be completed within one year of posting of the required security. Such one year period may be extended once in the discretion of the Town Manager or designee where weather or other circumstances justify the extension. In the event of any extension the bond amounts shall be reviewed and adjusted as necessary.

13.7.3 OTHER PERMITS

In order to ensure compliance with certain provisions of this Title for projects requiring other permits the Town Manager or designee is authorized to ensure completion of the approved design through a form of security as deemed necessary by this section or as determined by the provisions of the required permit.

13.7.4 LOGGING AND TREE REMOVAL, GRADING, TRENCHING, AND HORSE BOARDING PERMITS

In the event that approval is sought for the completion of project requiring logging and tree removal, grading, trenching, or horse boarding, the applicant may be required to submit a guarantee similar to that required for subdivisions. (See section 13.6.2.)

13.7.5 TERM OF SECURITY

The terms of any security arrangement offered to Brian Head Town shall include, but not be limited to:

- a. An approved final plat, permit application, and all associated data required for the completion of the subdivision or permitted project, including approved construction plans which are used to compute the cost of the improvements by the Town Engineer or Manager.
- b. The improvements shall be completed to the satisfaction of the Town Manager or designee and according to Town specifications as established in this Title.
- c. The Town shall have exclusive control over the security proceeds, and they may be released only upon written approval of the Town Manager or designee.
- d. The security proceeds may be reduced upon request of the Subdivider or permittee with approval of the Town as the improvements are installed. The amount of the reduction shall be determined by the Town Manager on advice from the Public Works Department or Town Engineer. Such requests may be made only once every 30 days, and no reductions may be authorized until such time as the Public Works Department or Town Engineer has inspected the improvements and found them to be in compliance with Town specifications. Any reductions may only be granted by written authorization of the Town Manager.
- e. If the security proceeds are inadequate to pay the cost of the completion of the public improvements according to Town specifications for whatever reason, including previous reductions, then the owner/subdivider/permittee shall be responsible for the deficiency; in the context of subdivision improvements, no further building permits shall be issued in the subdivision until the improvements are completed or a new security agreement has been approved and executed to ensure completion of the remaining improvements.
- f. If upon written demand of the Town after expiration of the security time period the security proceeds are not transferred to the Town within 30 days of the demand, then the Town's costs of obtaining the proceeds, including the Town Attorney's Office fees and costs of outside attorney's fees and court costs, shall be deducted from the security proceeds.

- g. Upon receipt of the security proceeds after the expiration of the time period, the costs of completion shall include reimbursement to the Public Works Department or Town Engineer and all other Town Departments for the costs of administration of the completion of the improvements, including inspection costs.
- h. The owner/subdivider/permittee agrees to hold the Town harmless from any and all liability that may arise as a result of the improvements which are installed until such time as the Town accepts the improvements.
- i. All improvements required under this Title shall be installed by a contractor or subcontractor licensed by the State of Utah, as required by law.

13.7.6 PAYMENT OF INTEREST

The Town shall not be required to deposit any funds provided as security in an interest-bearing account. However, any interest accruing on deposited funds shall accrue to the benefit of the owner, subdivider or permittee and not to the Town, unless expended for completion of required improvements.

13.7.7 RELEASE OF FUNDS

Brian Head Town shall relinquish funds held or security posted for the purpose of paying for required improvement work performed according to the plans as that work is completed. In such event, the Town shall release funds equal to the actual cost of performing the work as the work progresses, minus five percent (5%). Upon satisfactory completion of all required improvement work, all funds, up to the final five percent (5%), shall be immediately released to the owner, subdivider or permittee. The final five percent (5%) shall be reserved by the town for a one-year warranty period. (See section 13.7.11 below.)

13.7.8 MODIFICATION OF PLANS

An owner, subdivider or permittee may request modifications to plans covering required improvements by submitting revised plans to the Town Manager or designee for review and approval by the appropriate land use authority. If the modification of the plans increases the cost of required improvements, additional security must be provided by the owner, subdivider or permittee to cover the increased costs.

13.7.9 PHASED PROJECTS

Security for improvements applicable to each phase of a phased project or development shall be provided as each phase is platted or permitted.

13.7.10 FINAL INSPECTION

After completion of all required improvements, the owner, subdivider, or permittee shall make a written request to the Town Manager or designee for a final inspection to be made by all affected Town departments as required by this Title. Upon receipt of inspection reports from all affected departments, a summary of the final inspections shall be provided by the Town Manager or designee specifying the acceptability and/or completion of all required improvements.

13.7.11 WARRANTY PERIOD

Once all required subdivision improvements are inspected and approved by the Town, a one-year warranty period shall begin and any guarantee or security filed with the Town with regard to such improvements shall be released, provided at least five percent (5%) of the guarantee or security amount is held to guarantee the quality of workmanship and materials during the one-year warranty period. At the end of the one-year guarantee period, any remaining guarantee or security shall be released only in accordance with Section 13.7.7.